EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

III. STIPULATIONS OF FACT

A. The Application of Section 242

1. To be eligible for benefits under the IUIA, a claimant must have been paid, during his "base period," wages for "insured work" (as that term is defined in Section 236 of the IUIA, Ill.Rev.Stat. ch. 48, §346) of not less than $1,600 of which at least $440 must have been paid during that part of his "base period" which does not include the calendar quarter in which the wages paid to him were highest. Ill.Rev.Stat. ch. 48, §420(E). (Hereafter the term "sufficient wages" is used to indicate that a claimant has earned both $1,600 of total base period wages and $440 outside the calendar quarter in which wages were the highest.)[3] Those claimants who have sufficient wages in their base period are said to be "monetarily eligible."

2. The question of whether a claimant is monetarily eligible is resolved by a "finding" as required by Section 701 of the IUIA. Ill.Rev.Stat. ch. 48, §451. If a claimant is found monetarily eligible, (s)he is said to have filed a "valid claim" within the meaning of Section 242 of the IUIA. Ill.Rev.Stat. ch.

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[3] For example, for a claimant filing in the first quarter of 1989, the base period would be the fourth quarter of 1987, and the first three quarters of 1988. If the claimant had earned $1160 in one of those base period quarters, $400 in another of the base period quarters, and $20 in each of the other two base period quarters, he would have earned just enough to qualify.

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48, §352.[4] Under the IUIA, a "valid claim" for benefits cannot be filed without sufficient "base period" wages.

3. A "benefit year," for initial claims, is the one year period beginning with the first day of the week (i.e. the Sunday of the week) with respect to which the individual first files a valid claim for benefits. Ill.Rev.Stat. ch. 48, §352.

4. Section 237 of the IUIA defines "base period" as the first four of the last five completed calendar quarters immediately preceding the claimant's benefit year. Ill.Rev.Stat. ch. 48, §347.

5. In determining whether a claimant has sufficient base period wages, Section 237 as enacted, does not allow IDES to use wages earned by a claimant in either the calendar quarter in which his claim is filed (the "filing quarter") or the immediately preceding calendar quarter (the "fifth completed quarter") when it determines whether the claimant has sufficient base period wages.[5]

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[4] That a claimant files a valid claim does not necessarily mean (s)he will receive benefits, because (s)he can be disqualified based on a non-monetary "determination" issued pursuant to Section 702 of the IUIA. Ill.Rev.Stat. ch. 48, §452. Examples of possible non-monetary reasons for disqualification are "misconduct" or "voluntary leave" disqualifications. See Ill.Rev.Stat. ch. 48, §§431 and 432.

[5] For example, assume that a claimant earned $1500 in the second base period quarter, $400 in the third, $20 in the fourth but none in the first. Assume, too, that (s)he earned $20 in the fifth completed quarter. Since the wages in the fifth completed quarter are disregarded, the claimant is ineligible as to this claim because, though (s)he earned more than $1600 in the base period defined by Section 237, (s)he did not earn at least $440 outside the calendar quarter in which the wages were highest.

6. Those claimants who need to have wages in the filing quarter, the fifth completed quarter, or both quarters counted by IDES to establish that they have earned sufficient wages are determined ineligible for benefits as of the date of their initial benefit claim because of the operation of Section 237.

7. Those claimants who do not have sufficient wages pursuant to Section 237 in the base period may be required to wait up to six months until those wages fall into the first four of the last five calendar quarters, defined by a later claim, in order to file a "valid claim" for benefits.

8. For claimants who are not monetarily eligible when they first attempt to file a "valid claim" because some or all of their wages are not in their base period, IDES will accept later filed claims as "valid claims," assuming that there are sufficient wages for the base period defined by the later claims.[6] IDES prospectively treats such claimants as eligible to receive benefits for weeks after the filing of the second or "valid claim," but not for weeks between the filing of the first claim and the filing of the second or "valid claim."

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[6] For example, the person described in fn. 5 will be eligible if (s)he files in the next quarter. The new base period will not include the quarter that had been the first base period quarter with reference to the first claim (in which (s)he earned nothing). Instead, it will consist of the second, third and fourth quarters and the fifth completed quarter created by the first claim. Those quarters contain $1500, $400, $20 and $20, respectively. Thus, by reference to the second claim, the claimant has both total wages of more than $1600 and $440 outside the quarter in which the wages were highest.

9. A change in the base period to one of the two systems that plaintiff claims are administratively feasible ("alternative systems") will (a) speed payment of benefits to those claimants whose benefits are delayed under the present system; (b) result in the payment of benefits (or more weeks of benefits) for some claimants who receive no benefits (or fewer weeks of benefits) under the existing system. This latter group includes those who could file a second or "valid claim," but do not do so, or those who become employed again before they can file a second or "valid claim" or before they receive as many weeks of benefits as they would have received under the alternative systems.

B. The Parties, The Class, And The Application Of Section 237 To The Named Plaintiff And The Class.

1. The Defendant

a. Sally Jackson f/k/a Ward, is the Director of IDES. As such, she has the responsibility for the administration of all unemployment insurance and employment service programs in Illinois. Ill.Rev.Stat. ch. 48, §610.

b. Jackson is sued in her official capacity.

c. IDES is Illinois' state employment security agency ("SESA"). Each state that participates in the federal unemployment insurance program (and all states do so) has an SESA.

d. IDES operates through a central office located at 401 S. State Street, Chicago, Illinois where management functions, and part of the appeals section are located, and through local unemployment insurance ("UI") offices which are located throughout the state. The local UI offices are where individuals file claims for unemployment insurance and where those claims are processed and initially adjudicated.

e. An organization chart of IDES is attached as Plaintiffs' Exhibit ("P. Ex.") 1.

2. The Named Plaintiff

a. Plaintiff, Luella Pennington, is a citizen of the United States who resides at 6321 N. Winthrop, No. 103, Chicago, Illinois 60660.

b. Pennington filed an initial claim for unemployment benefits on June 7, 1984. Under Section 237, the base period created by that claim consisted of the four calendar quarters in calendar year 1983 since they were the first four of the five completed calendar quarters preceding the quarter in which Pennington filed.

c. Pennington received no wages for insured work in calendar year 1983. Therefore, under existing Illinois law, she was not monetarily eligible for benefits based on her June 7, 1984 claim.

d. Pennington did receive wages for insured work in the first and second quarters of 1984.

e. Pennington filed a second claim for unemployment benefits on October 5, 1984.

f. Under Section 237, Pennington's base period for her October 5, 1984 claim included the third and fourth quarters of 1983 and the first and second quarters of 1984.

g. Pennington had sufficient wages in the base period defined by reference to her October 5, 1984 claim to make her monetarily eligible for benefits. She was paid benefits beginning the week of October 5, 1984.

3. The Class

a. By order of July 11, 1986 this Court conditionally certified a class defined as follows:

> All claimants for unemployment insurance benefits under the Illinois Unemployment Insurance Act ("the Act"), who since July 15, 1983, have been, are being or will be denied such benefits by the Illinois Department of Employment Security solely because part or all of their wages, otherwise sufficient to satisfy Section 500(E) of the Act, were disregarded by operation of Section 237 of the Act.[7]

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[7] By order of March 19, 1986, this Court permitted plaintiffs to amend their complaint, which was originally filed July 15, 1985, to encompass class members back to July 15, 1980. That decision, which the Court described as "a very close call," was based on the holdings in Shortess v. City of Chicago, 617 F.Supp. 661, 662-66 (N.D. Ill. 1985) and Johnson v. Arnas, 624 F.Supp. 1067, 1068-1073 (N.D. Ill. 1985), that the limitations period for §1983 actions in Illinois was 5 years. Those

b. By definition, Section 237 delays the date on which each class member can file a valid claim in a manner similar to the delay experienced by Pennington as a result of the operation of Section 237.

c. In 1986, 526,469 claims for unemployment insurance benefits were filed with IDES. Of these, 63,518 claims were denied because they lacked qualifying wages. Of those 63,518 claims, approximately 15,034 would have been monetarily eligible if the wages they earned in the fifth completed quarter had been counted as qualifying wages, and another 9,115 individuals would have been eligible if the wages they earned in the filing quarter had been counted as qualifying wages.

C. Reporting Wage Record And Wage Request Systems

1. Generally speaking, there are two systems that states use for compiling wage data to determine whether unemployment insurance claimants have sufficient wages to qualify for benefits: the wage record reporting system, and the wage request reporting system.

2. The most common system used today is a wage record system. That is the system used by Illinois. Under a wage

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decisions have since been rejected in Kalimara v. Illinois Department of Corrections, 879 F.2d 276, 227 (7th Cir. 1989). Plaintiffs, therefore, agree that the class herein should be redefined to extend back only two years prior to the filing of the complaint or until July 15, 1983.

record system, those employers who are covered by the state's unemployment insurance statute report gross wages of all their employees to the state's SESA on a regular (usually quarterly) basis.

3. A wage record system is characterized by the existence of a gap between the end of a claimant's base period (in Illinois, the last day of the fourth of the five completed calendar quarters prior to the quarter in which the claimant filed for benefits) and the beginning of that claimant's benefit year (in Illinois, the Sunday of the week in which the claimant filed for benefits). This gap is necessary because some time is required for employers to report wages and for the SESA to make that information available in the local UI offices where claims are first taken and adjudicated.

4. In contrast, under a wage request system, wage information for a particular claimant is requested of that claimant's employer(s) when the claimant files a claim.

5. Since, in a wage request state, wage information is not reported to a SESA except as required to adjudicate each particular claim, SESAs can request the most recent wage information for each claimant. That is, there is no need for a gap (or at least not a substantial one) between the end of the claimant's base period and the beginning of that claimant's benefit year. When the SESA requests wage information, it requests it for the year's period just before the claimant filed the claim. Consequently, wage request systems are characterized

by base periods that have either no gap (e.g., the 52 consecutive calendar week ending with the day immediately preceding the first day of the week in which the claimant files a claim, Mass. Ann. Law ch. 151A, §1(a)), or no substantial gap (e.g., the first 52 of the last 54 weeks preceding the week in which the claimant first files a claim. See, R.I. Gen. Laws §28-42-3(10) for benefit years beginning prior to October 1, 1989.

6. A few states "move" the base period upon the filing of a claim by a claimant who needs his more recent wages to qualify. That is, the SESA first looks at the wages earned in the first four of the last five completed calendar quarters, but if the claimant lacks sufficient wages to qualify for benefits, the SESA then redetermines the claim based on the wages earned in the four completed calendar quarters prior to the date of the claim. E.g., Ohio Rev. Code Ann. §4141.01(Q)(1), (2). In one case, Vermont, the base period can be moved to include the wages earned in the last three completed calendar quarters and in the weeks of the filing quarter prior to the date of the claim. 21 V.S.A. §1301(17).

7. A chart of the systems used by all of the states is P. Ex. 2. Approximately 80% of all other jurisdictions have a wage record system similar to that in Illinois.

8. To the best of the parties' knowledge, the Secretary of the United States Department of Labor has certified every state's base period as meeting the requirements of the

Social Security Act and the regulations of the United States Department of Labor.

D. Illinois' Wage Record System

1. Illinois is a wage record state. When a person first files a claim for unemployment benefits, IDES's staff in the local UI office accesses the Benefit Information System ("BIS") which is a computer based processing system which stores information regarding the payment of unemployment insurance benefits to claimants, processes payments of benefits to claimants and reports on benefit payment activity. BIS is part of the Program and Planning Division of the Management Information System Division of IDES. (Interrog. No. 17, 2nd set; Carrig 15-11.)

2. When a claim is entered on the BIS, the computer generates a document showing the claimant's base period, the wages in each quarter of the base period, and the resultant benefit amount. That document reflects the "finding" required by Section 701 of the IUIA. See Section III.A.2 supra. The form on which IDES makes the finding is attached as P. Ex. 3.

3. Illinois employers file, with IDES, quarterly reports of the gross wages paid to their employees. See, Ill.Rev.Stat. ch. 48, §§550-553, 56 Ill.Adm.Code 2760 subpart B. This data is used to make both a finding of a claimant's base period wages, that is, whether a claimant files a "valid claim"

for benefits, and the computation of the contributions due from the employer to the Illinois unemployment trust fund.

4. Employer's wage reports to IDES are submitted to the Document Control Subdivision of the Revenue Division of IDES.

5. Employers can report wage information either on a form called a UC 3/40 (a copy of which is P. Ex. 4) or on magnetic tape. The UC 3/40 contains two parts. The first is the UC-40 which is the part that records employees' wages.[8]

6. Employers are required to report by the last day of the month following the quarter in which the wages were paid (i.e., April 30, July 31, October 31, and January 31). See 56 Ill.Adm.Code §2760.125. Hereafter, these months are called "reporting months."

7. When IDES receives wage information from employers on a UC 3/40, the UC 3/40 goes to the Springfiled Processing Center at Marine Bank. There the report is opened, sorted by type, given a "batch" number so that it can be identified later if necessary, microfilmed, boxed, the employer's check for contributions paid, if any, is removed and deposited, and the wage information is keypunched and sent on tapes to the State of Illinois Data Center in Springfield. It takes 1 to 5 weeks until the information is input into IDES's computers on its Accum File. IDES receives wage data on tape from Marine Bank which, in that form, can be used by the Illinois Central Computer Facility which

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[8] The second part, the UC 3, is to account for the amount of contributions the employer owes.

has the following four computers: one IBM 3090/600S - 256 MEG-80 Channels; one IBM 3090/600E - 256MEG - 80 channels; one IBM 4381 - 32MEG - 12 channels; and one AMDAHL 5880 - 96MEG - 48 channels. The operating systems and release versions used by each of these computers is MVS/XA release 2.2 with JES2, and the language used is cobal. The programming was designed by Arthur Anderson and Company.

8. About 88% of the employers file their UC 3/40's in a timely fashion.

9. The Error Correction and Validation Unit corrects UC 3/40's that were improperly filled out. That unit handles less than 1% of the UC 3/40's that are filed.

10. There are four peak periods in which the work IDES does processing the wage information reported by employers is greatest. In the Document Control Subdivision, these peak periods begin about one week prior to the end of the reporting months, and last about 3 to 8 weeks with an additional week to process delinquent reports.

11. IDES receives about 80% of the employers' wage reports in a ten-day period between the last five days prior to the end of a reporting month and the five days after the end of a reporting month.

12. Approximately 3% of the employers in the state report their wages directly on magnetic tape, but that constitutes about 20-22% of the wage information reported because

the employers who do report on magnetic tape tend to be the larger employers.

13. Magnetic tapes are sent to employer representatives in the Magnetic Tape Unit of the Employer Contact Section of the Document Control Subdivision of the Revenue Division of IDES.

14. IDES encourages employers to report wage information on magnetic tape because it is a more efficient means of processing wage reports than by use of the UC 3/40. The magnetic tape substitutes for the wage information that would otherwise be reported on the UC 40. The magnetic tape information of employees' wages is logged and sent by the Magnetic Tape Section to MISD.

15. After a magnetic tape arrives at MISD, it takes 12 to 36 hours until the information contained on it is posted on the computers except that it can be up to 72 hours during peak periods.

16. Less than .001% of the reports sent by magnetic tape have errors.

17. IDES is considering accepting computerized wage data on "floppy disks," but has not instituted that alternative yet because IDES does not have the computer software to do so and may have to have some new hardware, too.

18. Data entered into the computer system is accumulated in an "Accum File" where it is checked by the computer system against certain criteria (e.g., receipt of all

information), and where the Error Correction and Validation Unit corrects mistakes.

19. Prior to July, 1989, IDES stored data on its computers as follows: After the six to eight week cycle that occurs after each quarter when IDES receives and processes wage reports, the information held on the "Accum File" was unloaded onto the Wage Record Data Base. The Wage Record Data Base for a new quarter was then processed to the BIS prior to every quarter so that when a new quarter began, the four quarters included in the base period defined by a claim filed in the new quarter were processed when a finding was requested from the computer in a local UI office. That is, data for a new quarter was added and data for the oldest quarter was dropped from the base period just prior to the end of each quarter. The data was changed over a weekend.

20. As of July, 1989, because of a statutory change to the Illinois Unemployment Insurance Act, IDES began entering wage information for the last completed quarter into its Accum file about once a week and more frequently towards the end of a quarter.[9] Local office employees can see these wages as soon as they are posted to the Accum file. The information is used to determine a claimant's last employing unit. This wage

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[9] Generally, the statutory change made only the last employer (for whom the claimant worked at least 30 days) prior to the filing of the claim liable for benefit charges, whereas generally, the statutory provision prior to the change apportioned the charges to all base period employers. See, P.A. 85-956 and P.A. 86-3 (amending Ill. Rev. Stat. ch. 48, ¶ 572.1).

information does not interface with other computerized information. Section 237 of the IUIA does not permit the use of such wages as base period wages.

E. IDES Computer Data

1. IDES produced two sets of computer data to plaintiffs. One was information on all 1986 claimants. The other was a sample of 200 claimants from 1985.

2. IDES extracted all claims from 1986 from its BIS database identified by social security number. IDES also provided the wages in each claimant's base period from the BIS. IDES then went to the wage record database and produced each claimant's wages for his/her fifth quarter and filing quarter. From this information, it can be determined who was monetarily ineligible when they first filed and who, among the group of monetarily ineligible claimants, would become qualified by use of the lag quarter wages and/or the filing quarter wages. IDES also identified which claimants who were monetarily ineligible when they first filed actually filed later claims and when they did so. A copy of a document entitled "Final Pennington Statistics," which is data from the 1986 study, is P. Ex. 5. Finally, IDES provided a breakdown by week of how quickly, during a quarter, wage data is reported by employers and input by IDES into its Accum File and checked for errors.

3. Pursuant to a discovery request from plaintiff, and pursuant to a methodology suggested by plaintiff's expert, IDES also provided a sample of 200 claimants from 1985 who were

monetarily ineligible. For each such claimant, IDES provided the date of claim, the wages in each of the four quarters of the base period, and the wages in the filing and lag quarters. A copy of a document entitled "First 200 Ineligible Claims With Effective Dates in 1985 Sorted by Date of Claim, Then Social Security Number" is attached as P. Ex. 6. This document was produced pursuant to this Court's order of December 3, 1986.

F. IDES' Cost Model Accounting

1. Introduction

a. The question of whether it is administratively feasible to change the definition of the base period is largely a question of the costs of the existing system as compared to the costs of any alternative. IDES and other SESA's measure the costs of various parts of their operation by a process developed at the Employment and Training Administration ("ETA") of the United States Department of Labor ("USDOL") and used by SESAs throughout the United States. The process is called cost model management system. The process is described in the Cost Model Management System Handbook ("Handbook"), which is published by the ETA. A copy of the Handbook is P. Ex. 7. The last time the USDOL funded a cost model management study was in 1985.

b. The parties' experts will testify to their opinions of the relative costs of the existing and alternative systems using the data and documents described in this Section III.F.

2. Cost Model Studies - Plaintiffs' Exhibits 8 and 9

a. To begin the cost model studies, IDES trained monitors who went to IDES offices and determined the time that various work required. The monitors issued reports for various functions such as those contained in P. Ex. 8. By analyzing the work done, IDES determined a minute per unit ("MPU") value for each task. IDES then estimated the number of such tasks that were required over a given period (typically a year) and thus determined the number of persons that were required to perform a particular type of work during a given year.

b. The raw data for a cost model study is summarized on step down tables, examples of which are included in P. Ex. 9. The acronyms on the step down sheets are defined in a glossary of the Handbook, a copy of which is P. Ex. 7.

3. Federal Funding Based On Cost Model Data- Plaintiffs' Exhibits 10 and 11

a. The cost model process is used by the USDOL to fund IDES, and other SESAs. P. Exs. 10 and 11 are the documents reflecting the federal funding for IDES for fiscal years 1986 and 1987 respectively.

Defendant's Exhibit 1 reflects the federal funding for IDES for fiscal years 1988, 1989 and 1990. The USDOL funding for staff is called personnel services and personnel benefits ("PSPB"). The USDOL funding for overhead is called non-personnel service needs ("NPS").

b. IDES is budgeted by functions which appear in the column (1) of the first page of P. Ex. 10 (1986).

c. Column (2) is a code number associated with each function.

d. Column (3) is the allocated MPU's (minutes per unit) associated with each function.

e. Column (4), "Workload," is the anticipated number of times each function will need to be repeated during the fiscal year.

f. Column (5) represents the number of staff years that must be paid to accomplish the function during the fiscal year given the allocated MPU's and the estimated workload. Staff years paid reflects both time actually at work and leave time (including, for instance, sick leave, vacation, and personal leave). The need for the time of one staff person for one year is called a personnel equivalent ("PE") or a full-time equivalent ("FTE").

g. Column (6) represents the number of staff years that USDOL estimates will be needed to accomplish the function. The difference between column (5) and

column (6) represents leave time associated with the staffing required to perform each function during the fiscal year.

h. The top of pages of P. Ex. 11 (1987) is a similar table reflecting FY 1987 allocations. The bottom of page 2 of P. Ex. 11 reflects a breakdown of tasks that comprise four of the functions.

i. In FY 1986, the USDOL paid $27,351 for each staff year. That number is reflected at the top of P. Ex. 10 (1986). It is an average of the costs of staff and includes not only base pay, but also benefits. (Clark at 9.) USDOL pays an additional amount for overhead associated with each staff position which for FY 1986 was approximately $6,660 per person.

j. In FY 1986, the USDOL funded 1834.83 PE's at IDES as reflected on the first page of P. Ex. 10. (The number includes a handwritten amount for administrative staff and technical ("AS&T") functions added and then reflected in the handwritten total.)

k. In FY 1987, the USDOL funded 1,884.56 PE's at IDES as reflected on pages 1 and 3 of P. Ex. 11. PE's in FY 1987 were funded at three different rates: $28,164 for regular staff, $26,788 for additional staff, and $31,422 for administrative support and technical staff. See p. 3 of P. Ex. 4 (Eggebrecht at 53). The handwritten amounts on p. 37 of P. Ex. 11 are

the salary alone without the costs of benefits. (Eggebrecht at 53.)

4. Cost Model Schematics - Plaintiffs' Exhibits 12 and 13

a. P. Exs. 12 and 13 are cost model schematics for initial claims functions and for wage record functions. This document breaks the cost of a function into its subparts. For instance, on the left of P. Ex. 12 (initial claims) is the MPU's for initial claims functions. The bottom number represents the total MPU's; the top number excludes that part of the MPU's for which IDES contracts with outside contractors, as represented by note "(4)." These numbers differ from those on P. Exs. 10 and 11 in that they represent the time IDES concludes from its studies that a task will actually take ("studied numbers" or "studied MPU's") whereas the figures on P. Exs. 10 and 11 represent the time that the USDOL will fund ("funded numbers" or "funded MPU's").

b. P. Ex. 13 is a cost model schematic of the wage record function.

IV. CONTESTED ISSUES OF FACT AND LAW

The central contested factual question is whether it is administratively feasible for IDES to use a different definition of the base period that would include the wages in the fifth

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STATEMENT
BY

GAY GILBERT
DEPUTY ADMINISTRATOR
OHIO BUREAU OF EMPLOYMENT SERVICES

ON BEHALF OF THE
INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES

TO THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES

APRIL 24, 1997

Mr. Chairman and members of the Subcommittee, my name is Gay Gilbert. I am Deputy Administrator of the Ohio Bureau of Employment Services, and I am here today representing the Interstate Conference of Employment Security Agencies (ICESA). ICESA is the national organization of state officials who administer the nation's public Employment Service, unemployment insurance laws, labor market information programs and, in most states, job training programs.

I would like to thank Chairman Shaw for the invitation to present ICESA's views about the federal court's ruling in the Pennington case.

Background

To establish eligibility for unemployment benefits, an individual must have sufficient wages preceding the filing of a claim. The period surveyed for these wages is called the "base period."

Most states use a base period consisting of the first four of the last five completed calendar quarters. For example, if the claim were filed today, April 24,1997, the base period would be January 1, 1996, through December 31, 1996. Even if the individual had worked during all of the period from January 1, 1997, through April 23, 1997, the wages from this work would not be used to determine eligibility for a claim.

The first four of the last five completed calendar quarters is the most common base period. It reflects the public policy judgement that unemployment benefits should be paid only when the claimant has an established attachment to the labor force. In addition, almost all states determine eligibility for benefits using wage information which is reported by employers on a quarterly basis for all workers. It takes time for these reports to be completed and submitted by employers and for states to enter the information into state computer databases.

Outline and Status of the Pennington Case

As you know, the plaintiffs in Pennington are a class of claimants who were not monetarily eligible for unemployment benefits using the standard Illinois base period but would have been eligible had earnings subsequent to the first four of the last five quarters been considered. They contend that the Illinois base period violates the Social Security Act's requirement that administrative methods ensure that UI benefits are paid "when due."

In 1994, the Seventh Circuit Court of Appeals reversed the district court and ruled that individuals could sue under the "when due" clause to challenge a state's base period. The appellate court remanded the case to the district court for a determination as to whether the "when due" clause required Illinois to adopt an alternate base period for the plaintiffs. To make the determination, the district court was instructed to balance the plaintiffs' interest in prompt

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payment of benefits against the state's interest in minimizing administrative costs. The U.S. Department of Labor submitted an *amicus* brief to the court supporting the Illinois Department of Employment Security's position.

The Illinois DES appealed the seventh circuit's ruling to the Supreme Court which declined to hear the case in November 1994. Twenty-three states signed an *amicus* brief supporting Illinois' position.

On remand, the district court weighed four factors: 1) the number of additional eligible claimants there would be under an alternative base period; 2) the amount of additional benefits that would be paid; 3) the increased promptness with which eligible claimants would receive benefits; and, 4) the administrative costs of implementing an alternative base period. There was no consideration of the potential impact on employers in terms of additional costs or administrative burden. With respect to administrative costs, the court found IDES' evidence credible--the agency would incur more than $13 million in one-time costs and additional annual operating expenses of more than $2.5 million. The court also stated it was likely that federal funding to cover the costs would not be forthcoming. Nevertheless, the court concluded that the first three factors inured to the plaintiffs' benefit and outweighed the fourth. Accordingly, the court ruled that Illinois had to adopt an alternate base period for the plaintiffs.

Illinois appealed the district court's ruling; however, just a few weeks ago the U.S. Court of Appeals for the Seventh Circuit affirmed the district court's judgement.

ICESA's Views

Our nation's unemployment insurance (UI) system is a unique federal-state partnership, grounded in federal law but executed through state law by state officials. The legislative framework created with the Social Security Act in 1935 gives states broad discretion to design their own unemployment insurance programs including determining the terms and conditions under which benefits are payable.

Prior to the court's interpretation in Pennington, Section 303 (a) (1) has been interpreted by the Executive Branch and by the courts since 1935 to mean that benefits should be paid as promptly as is feasible administratively under the terms and conditions of state laws.

Throughout the history of the unemployment insurance program, determining the period that constitutes the base period for unemployment insurance claims purposes has been one of many eligibility criteria ~~that federal law has left to the states~~. For example, each state--through its legislative process--decides the amount of earnings necessary to qualify for benefits, whether various reasons for voluntarily leaving a job constitute "good cause" and when the reasons for discharge from a job are such that an individual is disqualified from benefits.

The legislation establishing the unemployment insurance system in this country makes it clear that Congress intends for the states to have wide latitude in designing their unemployment compensation programs. That being the case, it is remarkable that the structures of state programs are so similar. This phenomenon can most likely be traced back to "draft bills" for state unemployment compensation laws that were provided to the states by the Department of Labor to illustrate legislation that would meet federal requirements. The base period that Illinois and most other states use was included in a draft bill that many states used as a model for their respective state laws. Therefore in establishing a base period consisting of the first four of the last five completed calendar quarters, states were assured that their law conformed to federal requirements. In addition, each year the Secretary of Labor must certify to the Secretary of the Treasury that each state's unemployment compensation law is in conformity with federal law in order for employers doing business in the state to claim the 90% offset credit against federal unemployment tax obligations. The Secretary has certified the Illinois law and the laws of other states with the same base period structure for almost 60 years.

We believe that the court's decision in Pennington is an implausible interpretation of the Social Security Act's requirement that administrative methods be designed to ensure the prompt payment of benefits when due and is inconsistent with the intent of Congress that states have wide latitude to design state unemployment insurance programs.

A number of states have put alternative base periods in place to address the circumstances of the plaintiffs in Pennington -- individuals who would not qualify using the first four of the last five quarters but who would qualify if more recent wages were used. ICESA believes that states should continue to have latitude to establish such alternatives or other standard base periods -- that the first four of the last five quarters is only one of a variety of base periods that states might use.

As technology that permits states to collect and process wage information more quickly becomes available, more states may wish to establish alternatives or more recent quarters as their base periods. However, purchasing the latest technology and implementing alternatives to standard practices are expensive. Administrative funding for unemployment insurance has been reduced substantially in recent years, and increases in the future to support practices such as alternative base periods do not appear likely. Right now states are directing scarce resources to making unemployment insurance computer systems Year 2000 compliant. Both UI benefit and tax systems contain numerous date-sensitive calculations which, if not modified to accommodate the century change, will have devastating consequences.

As you know, administrative funding for unemployment insurance is included under domestic discretionary spending caps although the program is an entitlement. There is currently no provision for increases in administrative funding for unemployment insurance under the discretionary caps--even though the number of beneficiaries who would be entitled to be served could increase substantially in an economic downturn.

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Implications

Earlier this year, California was sued in a Pennington-type suit. Other states may face similar lawsuits very soon. Losing a Pennington-type case would mean that if claimants do not qualify for UI benefits under the standard base period, an alternative period, such as the most recent 52 weeks or the most recent 4 quarters, would be used. Pennington could also be used as a precedent for lawsuits arguing that the "when due" clause requires an alternative base period whenever inclusion of more recent wages would yield a higher benefit amount. Pennington blurs the line between what SESAs can and cannot be sued for, potentially giving rise to further lawsuits against state employment security agencies regarding issues beyond base periods.

We are concerned that Pennington could establish a precedent for determination of other qualifying and eligibility requirements for state unemployment benefits by the judicial rather than the legislative process. Expansion of the courts' authority into setting qualifying and eligibility requirements for unemployment benefits preempts the democratic process and, as a result, is likely to erode public support for the program.

In the legislative process, discussions about qualifying and eligibility are not an entirely intellectual exercise. The practical implications, as well as the intellectual basis, of new provisions must be recognized because the legislative body bears responsibility for the outcome. For example, in a state where individuals in the same circumstances as the plaintiffs in Pennington are not eligible for benefits, legislators must explain to constituents why they are not eligible; in a state where an alternative base period is put in place, legislators must explain to their employer constituents that their unemployment taxes will be higher. In the legislative process, all interests must be weighed. The courts simply issue an opinion and take no responsibility for implementation.

Recommendation

In early January, Congressman Phil Crane (R-IL) introduced H.R. 125 which clarifies that individuals cannot file "when due" lawsuits to force changes in state base periods. It does not prohibit a state from adopting an alternate base period and does not take away from any claimant any right now enjoyed with respect to unemployment insurance.

We believe that it is in the best interest of the unemployment insurance system and the workers and employers it serves to maintain the historical interpretation of the Social Security Act's "when due" clause; that interpretation would be changed significantly if the Pennington decision stands. ICESA urges you to enact H.R. 125 making clear Congressional intent to leave establishment of base periods to the states.

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TESTIMONY
BEFORE THE HUMAN RESOURCES SUBCOMMITTEE,
HOUSE WAYS AND MEANS COMMITTEE,
BY
THE HONORABLE LYNN QUIGLEY DOHERTY,
DIRECTOR, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY,
ON BEHALF OF
THE HONORABLE JIM EDGAR,
GOVERNOR OF THE STATE OF ILLINOIS

April 24, 1997

Thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to testify before you today. Once again, the State of Illinois is here to ask for your help in passing legislation to overturn the federal appellate court decision in *Pennington v. Didrickson*. That decision represents a 180-degree departure from the manner in which both the federal government and states have construed the Social Security Act, since that statute's enactment more than 60 years ago. It involves unelected federal judges in tax and spending policy that should be reserved to elected officials. Left standing, it could soon have a costly impact upon employers and state government in Illinois and aggravate the federal deficit by hundred's of million's of dollars. Its impact is already being compounded across the nation.

Background - State Base Period

Pennington is a class action lawsuit, challenging the provision of Illinois law that establishes the state's "base period." As you know, the base period is the period of time examined to determine whether an individual has earned enough wages to be eligible for unemployment insurance and, if so, the amount of the individual's weekly unemployment check. The base period in Illinois is the first four of the last five completed calendar quarters preceding the individual's filing an initial claim. To qualify for unemployment insurance in Illinois, an individual must have been paid at least $1,600 in wages during his or her base period, with at least $440 having been earned outside the quarter in which the individual's wages were highest.

Forty-nine other jurisdictions use the same base period as Illinois. Of those, eight have adopted alternate base periods for individuals who do not qualify using the standard base period. There are two reasons for the nationwide prevalence of the base period Illinois uses.

First, a base period of the first four of the last five quarters generally ensures that unemployment insurance will be available for workers with a genuine attachment to the labor force, but not necessarily for those with only a marginal connection.

The legislative history of the Social Security Act indicates that unemployment insurance was intended to be limited to individuals with established ties to the workforce. According to a 1935 report by the Committee on Economic Security, which drew the blueprint for today's unemployment insurance system, unemployment insurance was intended for the "ordinarily steadily employed." The Ways and Means Committee's report on the Social Security Act noted the program was not intended to provide relief for everyone who was out of work.

Congress' intent still makes sense today. Unemployment insurance is funded almost exclusively by employers. In Illinois, it is funded 100 percent by employers. Employers alone should not bear the burden for individuals with little or no attachment to the world of work.

Second, a base period like Illinois' streamlines administration and minimizes the risk of fraud. Within a month following the close of each quarter, Illinois employers provide the state with reports on the wages paid to their workers during that quarter. The state uses those reports to verify that claimants are monetarily eligible for unemployment insurance. With Illinois' base period, all reports needed to verify an individual's eligibility should already be in the state's computer system when the initial claim is filed.

***Pennington* Lawsuit**

The plaintiffs in *Pennington* are demanding that the federal court broaden eligibility for unemployment insurance by requiring Illinois to adopt multiple base periods. They argue the Social Security Act grants federal judges the authority to do so. Specifically, they maintain that anyone who has not earned $1,600 over the 12 months included in the base period, or has not earned $440 outside the high quarter, should be able to try to establish eligibility through an alternate base period using the last four quarters.

When the case was first heard in district court, the judge agreed with Illinois that, as part of the state's monetary eligibility requirement, Illinois' base period could not be challenged in litigation under the Social Security Act. However, in *Pennington v. Didrickson*, the appellate court reversed and remanded the case, to determine whether Illinois had to adopt multiple base periods.

To make that determination, the appellate court instructed the district judge to balance the benefits which some claimants could derive from the alternate base period against the state's interest in holding down administrative costs and minimizing fraud. On remand, the district judge determined the claimants' interests outweighed the state's and, therefore, that Illinois had to adopt the alternate base period. Just recently, the appellate court affirmed the district judge's determination. Illinois will petition the Supreme Court to hear the case. That petition will include the same argument I make to you today.

With all due respect, the appellate court was wrong when it held federal judges could decide the type and number of base periods a state was to have. It was wrong for a number of reasons. The legislative history of the Social Security Act indicates Congress intended states to have broad freedom to set up the types of unemployment insurance systems they considered appropriate.

The United States Supreme Court has held that the Social Security Act was intended to recognize the importance of each state establishing its own eligibility criteria for unemployment insurance.

In addition, since the establishment of the unemployment insurance system, the Labor Department - the federal agency charged with enforcement of the Social Security Act as it pertains to unemployment insurance - has considered a base period of the first four of the last five quarters to be consistent with the Act. As you will recall, the last time this Subcommittee considered the consequences of *Pennington*, the Labor Department did not depart from its longstanding position that the type and number of base periods employed by states are matters for state policy makers.

In the 1970's, Congress itself expressly recognized and took no issue with the states' widespread use of base periods consisting of the first four of the last five quarters.

Beyond all that, however, the appellate court was wrong because its decision vests unelected federal judges with the authority to substitute their judgment for governors and state legislatures with regard to tax and spending policy. The balancing test it prescribed is essentially a policy judgment of the type that governors and state legislatures are elected to make and are better-suited to make. The appellate court's ruling has separated the authority to make policy decisions from accountability for those decisions, with potentially expensive consequences.

Potential Illinois Impact of *Pennington*

In deciding the case on remand, the district judge noted that the administrative costs of the alternate base period sought by the plaintiffs could be substantial - million's of dollars in one-time costs and $2.5 million in additional yearly operating expenses according to the Department of Employment Security. He also acknowledged that additional federal dollars to cover those costs were not likely to be forthcoming. He did not, however, concern himself

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with where the money to cover those costs would come from or with any of the other significant implications of what the plaintiffs want.

Besides finding the money to implement the plaintiffs' scheme, Illinois would also have to find the time and personnel, inasmuch as the State is already in the middle of two major automation projects for the benefit of claimants: overhauling its extensive mainframe computer system to enable it to continue running in the year 2000 and beyond and implementing a telephone certification system. The telephone certification project is a streamlining initiative that will eliminate the need for claimants to mail paper forms to the State to certify as to their continued eligibility for benefits. As an aside, implementation of the plaintiffs' multiple base period scheme would negate most, if not all, of the cost savings anticipated from telephone certification. The year 2000 project is necessary to ensure the State remains able to pay benefits at all.

In addition to the administrative burden it would impose on state government, *Pennington* could also substantially raise outlays from Illinois' Unemployment Trust Fund account and impose hefty increases in employer taxes.

The Department of Employment Security estimates the alternate base period the plaintiffs are seeking would increase Illinois' Trust Fund outlays by 1.5 percent. A Labor Department study indicates alternate base periods raise state Trust Fund outlays by four to six percent. A 1.5-percent increase in outlays from Illinois' Trust Fund account would on average amount to around $20 million per year; a six-percent increase would approach $100 million, annually.

As state law is currently written, additional outlays would automatically trigger tax increases for Illinois business. A 1.5-percent increase in outlays would result in an employer tax hike averaging nearly $10 million per year. A six-percent increase in outlays would raise employer taxes by over $40 million each year.

Since state Trust Fund accounts are part of the unified federal budget, the difference between the increased outlays and the higher taxes would translate into an increase in the federal deficit - a more than $100-million increase over the next eight years if outlays rose by 1.5 percent; a $400-million increase if outlays rose by six percent .

Alternatively, the State could face pressure to offset the increased payouts resulting from *Pennington* by cutting benefits elsewhere.

In any case, determining eligibility based on wages earned after the first four of the last five quarters would require additional reporting from employers to verify the earnings, thereby imposing substantial new "paperwork burdens."

Potential National Impact of *Pennington*

Pennington's impact in Illinois, including its effect on the federal deficit, could presage things to come for nearly every other state. The appellate court's decision is binding in Indiana and Wisconsin, as well as Illinois, and can be used as precedent to attack other states' unemployment insurance laws. As you know, a *Pennington*-type suit has now been brought against the State of California, as well.

The California litigation demonstrates the inherent difficulty of leaving to judicial fiat the type and number of base periods a state is to use. In the California case, the plaintiffs are demanding an alternate base period of the last 52 weeks. Consequently, even if Illinois were to adopt the multiple base period scheme the *Pennington* plaintiffs are after, the State would still be exposed to further lawsuits by different plaintiffs who wanted still other alternate base periods to accommodate their particular needs.

Moreover, *Pennington's* use as precedent will not necessarily be limited to cases where an alternate base period is the difference between eligibility and ineligibility. States can

expect the argument that the Social Security Act requires an alternate base period when an alternate base period would yield a higher weekly benefit check. *Pennington* has blurred the line between what a state can and cannot be sued for under the Social Security Act.

Last year, as you know, the Congressional Budget Office estimated that, if implemented nationally, the multiple base period scheme the *Pennington* plaintiffs are seeking could raise outlays from the federal treasury by more than $350 million per year. That figure would rise dramatically as litigants' demands for different base periods multiplied.

In the friend-of-the-court brief it submitted to the appellate court, the Labor Department said, "Given the widespread use of the type of base period employed by Illinois, an order striking down the Illinois law undoubtedly would cause nationwide disruption in the various states' unemployment compensation systems."

The case's implications beyond Illinois' borders prompted 23 states to join Illinois in requesting Supreme Court review of the appellate court's decision in *Pennington v. Didrickson*.

Conclusion

The type or number of base periods a state uses is not the litmus test of the fairness of that state's unemployment insurance system. For example, in each of the eight states that have adopted the alternate base period sought by the *Pennington* plaintiffs, the amount necessary to qualify for benefits is substantially higher than in Illinois - up to twice as much. A state's base period structure is simply a partial reflection of how that state's policy makers have decided to allocate the system's limited resources to best serve the interests of everyone whom the system was established to serve.

My specific request to you is for legislation to clarify the Social Security Act does not govern state base periods. I am not asking you to prohibit the use of multiple base periods or to take away any rights now enjoyed by any claimant. The legislation I am seeking will simply eliminate the need for further costly litigation. Consistent with the intent of the unemployment insurance system's architects, it will also ensure that requirements as to eligibility remain a decision for state policy makers, who are directly accountable to the people who will be impacted by that decision.

I look forward to working with you toward a speedy resolution of this issue.

Thank you again for your time and consideration.

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TESTIMONY
BEFORE THE HUMAN RESOURCES SUBCOMMITTEE,
HOUSE WAYS AND MEANS COMMITTEE,
BY
ALBERT R. MILLER, PRESIDENT,
PHOENIX CLOSURES, INC.

April 24, 1997

Thank you, Mr. Chairman and members of the Subcommittee. My name is Bert Miller. I am the President and chief operating officer of Phoenix Closures. My company is located in Naperville, Illinois and produces container caps for regional and national brand products, both domestic and international. Our customers cover a wide array of markets, including foods, household chemicals, cosmetics, health care products, industrial products and pharmaceuticals. Phoenix Closures presently employs more than 200 workers and has been an Illinois employer for over 100 years.

I am here today to express my strong support for the legislation Governor Edgar and Director Doherty are seeking in connection with the *Pennington* case.

There are problems both with the alternate base period itself and the manner in which it would be implemented if *Pennington* stands. The *Pennington* alternate base period would provide for the payment of unemployment benefits, financed exclusively by employers, to individuals with no established connection to the workforce. To that extent, it would begin to turn the unemployment insurance system into a 100-percent employer-financed welfare program - something well beyond what I understand to have been Congress' intent and something employers cannot afford.

By increasing outlays from Illinois' Trust Fund account, the alternate base period would also raise employer taxes. The greater the rise in outlays was, the higher the tax increase would be. The lowest estimate I have seen is that the alternate base period would increase outlays from Illinois' account by 1.5 percent. An increase of that size would raise employer taxes by around $10 million per year. There is a Labor Department study that estimates an alternate base period can raise a state's Trust Fund outlays by four to six percent. A six-percent increase in outlays from Illinois' account would raise taxes on Illinois business by $40 million each year.

The alternate base period's cost to employers, however, would not be limited to higher taxes. I understand employers would also be faced with additional reporting requirements, with penalties for noncompliance, to verify claimant earnings that had not yet been reported and entered into the state's computers.

To put that into context, permit me to discuss briefly my own company's situation. Phoenix Closures is a longtime Illinois business run by a longtime Illinois family. Our success is built on the strong partnership we have with our employees and their union - the United Needle and Textile Employees Union, AFL-CIO. The company's employees are also its neighbors, and Phoenix Closures intends to remain committed to them and its home in Illinois. However, we face intense competition from businesses whose roots are not as firmly fixed. Many of our competitors have moved to more rural parts of the country, to take advantage of low wages. In the last three years, four of our competitors have established plants in Mexico.

Phoenix Closures has remained competitive by substantial investments in high-tech equipment, in training for our employees to run that equipment and in doing our level best to hold the line on costs whenever possible.

In that environment, court orders that raise taxes by as much as $40 million per year and compound government-imposed paperwork are not just dispiriting. For many businesses like ours, a system that allows things like that will ultimately be deadly.

The alternate base period's costs, however, would not just fall on employers. I am also troubled by the potential impact on government - million's of dollars in start-up costs and $2.5 million in extra annual costs according to the Department of Employment Security, with no identifiable source to cover those costs. I have been a consistent advocate of the idea that government needs to work a whole lot smarter and cheaper than it does right now. However, no entity can achieve that result if it just keeps taking on more and more things to do. The alternate base period just gives government one more thing to do and takes us further in the wrong direction.

Besides the problems with the idea of an alternate base period, I am deeply troubled by the fact that, as the *Pennington* case has transpired, employers have been completely shut out of the process. As things stand now, most of my concerns will never even enter into the debate. According to both the district and appellate courts, the only relevant considerations in deciding whether a state is to be ordered to adopt an alternate base period are how much more would be paid in benefits and what the impact would be on government's operating expenses. The cost to employers, in terms of higher taxes and additional paperwork, will simply not count. Employers will not even be able to have the satisfaction of voting against the judge who ordered the alternate base period. Mr. Chairman, employers are the ones who pay for the system; our concerns should at least be considered relevant to the discussion.

The legislation Illinois is seeking is simple. It will just make sure that the decision as to whether the benefits of an alternate base period justify its costs remains one for policy makers who will be accountable to the people the decision will affect and that, as the costs and benefits are weighed, all sides' concerns are given their due. I respectfully ask you to support it.

Thank you for you taking the time to have this hearing today and for considering my views.

Testimony of

JANET L. NORWOOD
Senior Fellow, Urban Institute

before the

Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives

Washington, D.C.

April 24, 1997

Testimony of

JANET L. NORWOOD
Senior Fellow, Urban Institute[1]

before the

Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives

April 24, 1997

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to discuss the nation's unemployment insurance program with you this morning. As you know, I chaired the Advisory Council on Unemployment Compensation (ACUC), having been appointed to the Council by both Presidents Bush and Clinton. The Council, established in Section 908 of the Social Security Act as amended, had 11 members appointed by the Congress and the President who, by law, were representatives of state governments, business, labor, and the public. The ACUC reviewed the entire Unemployment Insurance (UI) program, held meetings and public hearings in different parts of the country, visited state offices, and met with groups of businessmen and with workers seeking benefits. Members of the Council also visited a number of state UI offices and staff at the U.S. Department of Labor. The Council convened two economic research conferences and sponsored a legal symposium to facilitate the exchange of ideas and to ensure a full understanding of the operation

1 Any opinions expressed herein are solely the author's and should not be attributed to the Urban Institute, its officers, or funders.

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of the UI program. The three reports of the Council contain, I believe, a useful summary of the operation of the program -- both the parts that are working well and areas which could be improved. Although many different perspectives were represented on the Council, most of the recommendations were unanimous.

The nation's system of unemployment insurance is now more than 60 years old. As the oldest federal-state cooperative program, it has served the nation well and, in fact, should be seen as a prime example of cooperation between the states and the federal government. The UI program provides economic security to millions of American workers who, through no fault of their own, are temporarily laid off or permanently lose their jobs. We should ensure that the program continues to meet the needs of workers in a labor market that is considerably different from that of the past.

Our country's labor force today is much more diverse, made up of men and women, skilled and unskilled, minorities and immigrants. More than 136 million people are in the labor force, and the labor force participation rate has climbed to over 67 percent. Almost 8 out of every 10 workers are employed in a service-producing industry. Factory workers, who were the prime recipients of UI benefits when the program began, today make up only 20 percent of nonagricultural employment. Part-time work has become more prevalent, much of it because people prefer it, but more than 4 million workers are forced to work part-time because full-time jobs are not available. In addition, nearly 8 million workers (6.1 percent of all employed workers) were multiple jobholders, that is, they held more than one job.

The fact that the unemployment rate -- at 5.2 percent -- is relatively low and that job creation continues makes this a very good time to review the UI program. This is a period when the demands on the UI system are relatively low and when, therefore, we should be planning for the future. It is important to note that according to data for the first week in March, only 37.4 percent of the unemployed in our labor force survey are receiving UI benefits. There are many reasons for this discrepancy, of course, since the UI system does not cover new entrants to the

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labor force or those long-term unemployed who have already used up their benefits. Nevertheless, the long-term downward trend in recipiency since 1947 shows that the UI program has been serving a decreasing proportion of the unemployed.

The ACUC made a number of recommendations for improvement of the system, and they are all useful. But I would like to focus my testimony this morning on two issues that I consider especially important. The first is the sharing of responsibility between the federal government and the state governments and the solvency of the UI trust funds. The second is the treatment of part-time and low-wage workers.

Defining the Federal and State Roles in the Unemployment Insurance System

The nation's unemployment insurance system is one of shared responsibilities and powers. It is important that those responsibilities be shared effectively so that the interests of the states and of the nation as a whole are best served. The federal government has a responsibility to protect the national interest in cases where the interests of the states do not coincide with those of the federal government. In cases where the interests of the two levels of government coincide -- which is very often the case -- the program should be left to the states. The ACUC made a number of specific recommendations about activities in the program which should be left to the states. Our report laid out a useful conceptual foundation for dealing with the responsibilities of the two levels of government in programs which must have the cooperation of both to succeed. I believe that the research that we did on this issue can be applied to many other programs and that the UI system should be seen as a useful model as we move more responsibility to state governments.

The Council found that the federal government had a responsibility to protect essential national interests in seven areas and to leave most responsibility for other areas to the states. The recommendations were that the federal government should: (1) ensure that each state maintains a UI system: (2) promote forward funding of the UI system: (3) coordinate the collection of labor

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market information and the monitoring of developments; (4) maintain supplemental benefit programs that trigger on automatically in recessions, thereby avoiding costly federal emergency benefits; (5) coordinate a more efficient pooling of risk through loans to states with serious recessions; (6) assure the eligibility of workers with labor force attachment for a minimum level of benefits; and (7) promote the efficiency and quality of program outcomes.

In other areas, the Council found that program details could best be left to the states. We recommended that many federal laws, regulations, and federal oversight be changed to leave the states unencumbered in areas best handled by them. For example, states should determine whether to disqualify certain groups of workers (i.e., school employees between terms or professional athletes), whether benefits should be reduced if workers received retirement benefits, and a variety of oversight functions about performance outcomes.

Our research showed that the pressures under which many of the states were operating encouraged a "race to the bottom," which affected two extremely important areas -- trust fund solvency and low-wage workers. Although some states maintained a degree of forward funding of the trust funds, others did not. Since one important purpose of the UI program is the provision of purchasing power during an economic downturn, the federal government has a responsibility to ensure that this is done. State trust funds must be adequately maintained in good times so that when recession hits, payments can be made to the workers who need them. The funds needed for these payments should be secured in periods of economic expansion and not in the midst of an economic downturn. I am concerned that insufficient attention is currently being given to building up the trust funds in some states now while we are in an economic expansion for use during some future recession.

Low-Wage Workers

Research conducted by the Council staff found that the competitive pressures among the states to attract business could well lead to a continued decline in the percentage of unemployed

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workers who received benefits. We were concerned to find that this problem disproportionately affected low-wage workers. When a state experiences insufficient trust funds to cope with the demand from workers entitled to benefits, often the first step taken is to tighten eligibility for those benefits. The brunt of this tightening hits especially those working part time and those earning low wages. For example, our research found that a minimum wage person who worked half time or for 20 hours each week the year round would not qualify for UI benefits in nine states. But a comparable part-time, full-year worker earning $8.00 an hour would qualify in all states. The point is that a worker with strong labor force attachment can be disqualified for UI because his earnings were too low. In the same way, we found that a worker employed two days per week for a full year at the minimum wage would not qualify for benefits in 29 states. But that worker would be eligible in all but two states if his earnings were $8.00 per hour. Thus, low-wage and part-time workers are disqualified either because of their low earnings or because they work only part time.

The ACUC report for 1995 declared: "Because of the structure of earnings eligibility requirements, low-wage, part-time workers must work more hours to qualify than higher-wage workers." This means that the system in some states discriminates against the working poor, exactly the group we most need to help in our society. I believe that this is an issue that will become more important as an increasing number of people move from welfare to jobs as the result of the recent welfare legislation. The former welfare recipients tend to have little labor force experience and frequently do not have much training; they can, therefore, be expected to suffer more spells of unemployment than the rest of the labor force.

Mr. Chairman, I have focused my brief remarks on only a few of what I believe to be among the most important issues covered by the careful study and review of the Advisory Council. I should be happy to try to answer any questions you may have.

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REFER TO

NOV 25 1996

November 21, 1996

The Honorable Patrick Johnston
California State Senate
P.O. Box 942848
Sacramento CA 94248-0001

Dear Senator Johnston:

This letter responds to your request for information regarding an alternate base period for individuals filing for Unemployment Insurance (UI) benefits. I apologize for any confusion or delay in your receipt of this information. It was my understanding that written answers to some of the questions posed in your letter have previously been provided to your staff while, as you note in your letter, other information was discussed informally. Finally, some of the questions raised in your letter required additional research and preparation which delayed our response.

In your letter you asked for information on the feasibility of instituting an alternate base period for individuals who can establish a claim for UI benefits only if their most recent earnings are considered under two specific scenarios; a base period comprised of the last four completed calendar quarters prior to the application for benefits, and a base period comprised of the 52 weeks prior to the application for benefits.

Specifically you inquired how these scenarios would affect:

- administrative costs;
- the number of claimants who would receive benefits sooner;
- the number of claimants who would receive benefits they otherwise would not collect;
- the dollar amount of benefits that would commence sooner;
- the dollar amount of increased benefits paid;
- the additional costs to the UI Fund;
- the additional number of welfare recipients who would be covered by the UI system; and,
- the welfare savings generated by increased coverage through the UI system.

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In order to answer these questions we developed estimates based on two separate, random 5,000 claim samples of valid and invalid claims (using the current method of determining a base period). The two samples were used to identify the number of claimants with invalid claims who would have valid claims under the new base period as well as those claimants with invalid claims who ultimately filed a valid claim once their wages appeared in the base period. The results of these samples were then applied to the 2.06 million claims filed in 1995.

The projections contained in this response were developed from data compiled before the recent statutory minimum wage increases. Since the amount of UI benefits available to a claimant is based on earnings during the specified four quarter base period, these increases will result in additional base period earnings for minimum wage workers. While the total effects of the minimum wage increases cannot be predicted due to constraints in the way employers report the wage information, generally these increases will have the effect of raising the Weekly Benefit Award for those claimants who minimally qualify for a UI claim and may decrease the total number of invalid claims.

Last Four Completed Calendar Quarters Prior to the Application for Benefits

If the base period were changed to the four most recently completed quarters, 76,140 claimants potentially would have been paid $121.1 million sooner than they would have otherwise received under the current base period. However, some of these claimants actually filed valid claims once their wages were included under the current base period. If this figure is adjusted to account for these claimants, a net total of 30,241 persons who did not have sufficient wages to establish a claim under the current system would have been paid $36.5 million under the most recently completed four quarter scenario.

Additional administrative costs to implement an alternative base period comprised of the four most recently completed quarters for claimants with invalid claims under the current system would be $7.8 million annually. This, coupled with the $36.5 million of annual increased benefits paid would bring the total cost to the UI fund for such a base period system to $44.3 million per year.

In order to answer your questions about the number of welfare clients who might be covered by UI under an alternative base period, and the savings this increased coverage might generate, we compared the number of individuals in the sample of invalid claims who would have been eligible for a UI claim under a base period of the four most recently completed quarters with the Medi-Cal Eligibility Determination System (MEDS) file. (The MEDS file is the Department of Health Services file on individuals collecting welfare benefits in California). We then extrapolated this comparison to the total number of invalid claims filed in 1995. This comparison showed that 16,357 of the individuals who were collecting welfare benefits and would have been eligible for a UI claim under a base period comprised of the four most recently completed quarters would have collected $23.7 million in UI benefits, offsetting a like amount in welfare costs.

52 Weeks Prior to the Application for Benefits

If the base period were changed to the most recently completed 52 weeks prior to the date of filing, 121,824 claimants potentially would have been paid $233.4 million sooner than they would have otherwise received under the current base period. Adjusting this figure to account for claimants who actually filed valid claims once their wages were included under the current base period, a net total of 48,364 persons who did not have sufficient wages to establish a claim under the current system would have been paid $92.7 million under the most recently completed 52 week scenario.

Additional administrative costs to implement an alternative base period comprised of the 52 most recently completed weeks for claimants with invalid claims under the current system would be $12.2 million annually. This, coupled with the $92.7 million of annual increased benefits paid would bring the total cost to the UI fund for such a base period system to $104.9 million per year. Comparing the data generated under the most recently completed 52 week scenario with the MEDS file showed that 28,200 of the individuals who would have been eligible for a UI claim under a base period comprised of the 52 most recently completed weeks would have collected $40.86 million in UI benefits and offset this amount in welfare costs.

A table summarizing the effect of implementing an alternate base period for claimants with invalid claims under the current base period for the two scenarios you proposed has been included for your reference.

I would point out, however, that the information presented in response to your questions reflects the costs associated with establishing an alternative base period for only those claimants with invalid claims under the current base period. These costs would be incurred in addition to the costs associated with maintaining the current system for those individuals who qualify for UI benefits under that system. Additionally, some claimants who qualify for benefits under the current system would benefit monetarily if more recent earnings were considered. Although not discussed in this response, one alternative to address the administrative burden of a dual system, as well as any perceived inequity from the perspective of the claimant, would be the extension of an alternative base period to apply generally to all claimants.

Information about potential increased employer costs associated with the collection of the additional wage information necessary under either base period scenario is also not included. Under either of the two scenarios you propose, ad hoc collection of wage information from employers, over and above that which is already reported quarterly, would be required. In addition, the collection of wage data under the most recent 52 week base period scenario is significantly more involved than that which would be required under the most recent four quarter scenario. The 52 week base period scenario would require that all wages in the base period be verified through contact with the employer. This creates a substantial burden on employers to provide wage data on request and is likely to result in strong employer opposition.

Currently, the Department is moving to expedite the processing and posting of quarterly wage information to the Base Wage File (BWF). The lag time between the beginning date of a claim and the last quarter of the base period under the current system is necessary to allow for receipt of the employer provided information and the posting of that information to the BWF. The Department is working to accelerate the processing of the wage data it receives from employers. A problem remains with the technological limitations of the old BWF system. The Department is working with Franchise Tax Board to improve the quality of the data and explore ways for both Departments to share information in the BWF. This effort is scheduled to be completed in July 1998. The new system will accommodate a flow process that will increase the speed of the processing and the accessibility

of the information as it moves through the system. Until the conversion is completed, the lag time between receipt of information from the employer and having the information accessible for use in computing benefits will not change significantly. However, once these improvements are implemented, the collection of the additional wage information necessary under the most recently completed four quarter based period would be minimized.

This means that the costs associated with implementing an alternative base period comprised of the most recent 52 weeks, whether for all claimants or just those with invalid claims under the current base period, are considerably higher than those associated with implementing a base period comprised of the four most recently completed quarters.

Thank you for the opportunity to respond to your questions. We share your interest in the issue of how, in light of welfare reform, UI benefits can provide a more effective safety net for those who have an attachment to the labor market. If you would like to further discuss the information contained in this letter or the implications and costs of either of the scenarios you propose, please contact Darlene Atkinson, Deputy Director of our Legislative Liaison Office at 654-8799.

Sincerely,

AL LEE
Chief Deputy Director

Selected Effects of an Alternate Base Period for Claimants with Invalid Claims		
Question	Last Four Completed Quarters	Last 52 Weeks
What are the administrative costs?	$7.8 million	$12.2 million
How many claimants would receive benefits sooner?	76,140	121,824
What is the number of claimants who would otherwise not receive benefits?	30,231	48,364
What is the dollar amount of benefits received sooner?	$121.1 million	$233.4 million
What is the amount of increased benefits paid?	$36.5 million	$92.7 million
What is the cost to the UI Fund?	$44.3 million	$104.9 million
How many additional welfare recipients would be covered?	16,357	28,200
What welfare savings are generated?	$23.7 million	$40.86 million

October 1962

(Relevant Portions)

Unemployment Insurance Legislative Policy

Recommendations for State Legislation 1962

U.S. DEPARTMENT OF LABOR
W. Willard Wirtz, Secretary

BUREAU OF EMPLOYMENT SECURITY
Robert C. Goodwin, Administrator
Washington 25, D.C.

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PREFACE

This statement of unemployment insurance legislative policy and recommendations for State legislation is a revision of the 1953 document, Unemployment Insurance Policy, Benefits - Eligibility. It has been prepared to meet the need for an up-to-date summary of legislative policy. It is intended primarily as a general policy guide and reference tool for the use of the staffs of the State employment security agencies and the Bureau's national and regional offices who are concerned with the preparation or review of legislative amendments to the benefit and eligibility provisions of the State employment security laws. It is hoped that the discussion will be useful also to labor and employer organizations and to other groups and individuals interested in unemployment insurance legislation.

A discussion of disqualifying income, which was included in the 1953 document, was not completed in time for release as part of this revised statement. It will be issued at a later date. Policy statements on other aspects of the employment security program, such as coverage, financing, appeals, and administration, also need to be updated. The Bureau plans to prepare and issue supplementary statements of policy on these subjects.

Although the Manual of State Employment Security Legislation, revised September 1950, is still the principal compendium of legislative language, the illustrative benefit schedules in the commentary of the Manual are now out of date and no longer suitable for reference purposes. Accordingly, new benefit schedules and other technical discussions and illustrations have been included in the Appendix of the revised statement.

Other legislative aids which should be consulted include Unemployment Insurance Purposes and Principles, issued in December 1950 as "a guide for evaluating the main principles of unemployment insurance laws"; Adequacy of Benefits Under Unemployment Insurance, BES No. U-70(R), issued in October 1958; and the Comparison of State Unemployment Insurance Laws as of January 1, 1962. The first two documents include criteria for appraising employment security laws; the third document will supply information on the provisions of the State laws. Copies of these documents are available from the Bureau of Employment Security.

October 1962

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II. BASE PERIOD AND BENEFIT YEAR

The base period and benefit year constitute the framework of the benefit formula. Unemployment insurance can be thought of as term insurance. Rights are established during the base period by workers in the labor force, to be used in the event of their unemployment during their benefit year. The base period is the period of the claimant's previous employment experience in insured work used as the base for determining if he is "insured" under the program, his weekly benefit, and maximum annual benefits. In all States except Wisconsin, the base period is related to a later period, the benefit year, in which benefit rights based on the claimant's base-period employment may be used. A base period is fixed in relation to the beginning of a benefit year; once established, it remains unchanged for the duration of the benefit year. Under most laws, a determination of weekly benefit amount and maximum annual benefits, once made for an individual, remains unchanged throughout the benefit year.

Types of Periods

Both the base period and the benefit year are of two main types, "individual" and "uniform."

Individual periods.--The individual benefit year, in most States, is a 1-year period beginning on the day with respect to which an individual first files a new claim, providing he has sufficient wages to be insured. In some States, however, there are additional requirements a claimant must meet (see page 5).

A variation which has been used is an individual benefit year beginning with the calendar quarter in which a valid claim is filed. Such a provision is not recommended, since it treats differently claimants whose unemployment begins early and those whose unemployment begins late in a calendar quarter. For example, a claimant filing in the last week of a quarter would have an effective benefit year of 40, rather than 52, weeks. This may be an advantage or a disadvantage to a claimant depending on the chance pattern of his unemployment and reemployment during the benefit year.

Since the base period is related to the benefit year, an individual base period is ordinarily related to the beginning of the claimant's unemployment. It is a characteristic of the individual base period that the earnings used to compute benefit rights are relatively recent. For this reason, the Bureau recommends the individual benefit year. The discussion of lag between base period and benefit year (page 4) indicates various types of individual base periods.

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Uniform periods. In a few States, the benefit year begins for all eligible claimants on the same day--i.e., the first day or the first Sunday of a specified month--and continues until the corresponding day in the next calendar year. A claimant who files a claim near the expiration of a uniform benefit year does not have any opportunity to draw all the weeks of benefits to which he may be entitled on the basis of his base-period employment and wages. However, such a claimant would ordinarily have benefit rights in the succeeding benefit year and could draw benefits based on a new determination of his rights.

In the States which use a uniform base period, it is defined as the calendar year preceding the beginning of the uniform benefit year.

Length of the Base Period and Benefit Year

The base period of 1 year (or 4 quarters or 52 weeks) used in all State laws at present is recommended. A 1-year base period usually reflects an individual's recent year-round employment pattern. However, under certain circumstances, it may not be representative of his normal attachment to the labor force. For example, an individual with a long history of almost full-time employment may experience considerable unemployment in a 1-year period because of illness or recession and may not qualify for benefits despite his work history and his current attachment. Without changing the base period, it is possible to admit such an individual to benefits under an alternative qualifying requirement that takes into account his employment not only in the 1-year base period but also over a longer period (see page 52).

Although a number of State laws provide for a 52-week individual benefit year, this type of period should not be used with a formula which provides for a 4-quarter base period. Since the 52-week period is 1 or 2 days short of a full year, it can result, when one benefit year immediately follows another, in the inclusion of the same calendar quarter of wages in each of the two base periods for such benefit years. (For a further discussion, see page A-1.)

Since the end of a benefit year and the end of a benefit week do not necessarily coincide, provision should be made for the allocation of split weeks to a specific benefit year. This may be done by allocating the weeks to a year by one of the following means: all weeks beginning in the benefit year, or all weeks ending in the benefit year, or all weeks of which four or more days fall within the year. Such allocation, which is made necessary by the fact that the unit of payment in the program is a week, should not change the ending or the beginning dates of benefit years as fixed by statute. It is preferable to provide statutory authority to handle this by regulation because administrative flexibility is desirable.

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Lag between Base Period and Benefit Year

Since unemployment insurance is designed to compensate wage loss, benefits should be based upon comparatively recent wages--i.e., the lag between the base period and benefit year should be as short as possible. As illustrated in Table 1 (page A-2), the lag varies widely with the type of period used and the manner in which wage information is obtained. (For discussion of a system of wage reporting that will permit reduction or elimination of the lag, see page 6.)

Lag with individual periods.--Under the most common definition of an individual base period (first 4 of the last 5 completed calendar quarters the interval between the end of the base period and the beginning of the benefit year (3 months to 1 day less than 6 months) is intended to allow time for the recording of all base-period wages prior to the beginning of a benefit year. Such a provision allows a minimum lag of 1 quarter between the base period and the benefit year. Since wage reports are usually received 1 month after the close of a quarter, they must be processed in the remaining 2 months to be available by the beginning of the quarter in which they may be needed for the computation of benefit rights.

A few States allow 1 month more for wage processing by defining the base period as the first 4 of the last 5 completed calendar quarters preceding a benefit year which begins in the second or third month of any quarter and the first 4 of the last 6 calendar quarters preceding a benefit year which begins in the first month of any quarter. However, this permits a lag period of 7 months during 4 months in the year, and a lag period in excess of 6 months is undesirable. For this reason, the Bureau recommends against such a definition of the base period.

Lag with uniform periods.--The uniform calendar base year and a benefit year beginning April 1 or July 1 involve a lag of 3 or 6 months between the end of the base period and the beginning of a benefit year. This means a lag of up to 15 to 18 months between the end of a base period and the beginning of some claimants' unemployment. When uniform periods are used, a claimant's weekly benefit may be based on wages earned as long as 2 years ago and is, therefore, unlikely to be realistic in terms of his more recent wages.

In spite of the simplification involved in the use of the same year as the base period for all claimants who file claims in a corresponding benefit year, such a uniform period is not recommended for the following reasons: (1) Wages used in the computation of benefits are more remote and, therefore, less indicative of the claimants' degree of recent attachment to the labor force than when a more recent base period is used; (2) Claimants are affected unevenly, depending upon when their employment began in relation to the beginning of the base period and when their unemployment began in relation to the beginning of the benefit year; (3) New entrants to the labor force must wait longer than when individual periods are used before they are afforded the protection of

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the program; (4) I: w entrants earn less than the imum qualifying mount in their first uniform base period, these wages are lost for benefit purposes. Under laws providing for individual periods, these wages can be used in combination with later earnings as a basis for benefits.

Administratively, a uniform base period and benefit year build up a peak load of claims at the beginning of the benefit year or just before it. The new claims load goes up because, in addition to claims from workers just becoming unemployed, the agency gets new claims from claimants receiving benefits at the end of the old benefit year, from those who exhausted their benefit rights in the old benefit year and have remained unemployed, and from those who were unemployed but not insured in the old benefit year and may be insured in the new benefit year.

Definition of "Valid Claim" to Begin an Individual Benefit Year

A valid claim is a claim which establishes the beginning of an individual benefit year. In most States it is merely a new claim filed by a claimant who meets the employment and wage qualifications for benefits. The Bureau recommends this definition of a valid claim under which a determination of insured status is made for any worker who files a new claim. This determination is administratively time consuming and should be started at once if it is to be available when needed for benefit payment. Provisions found in some State laws which require that the individual must meet other tests in addition to the monetary requirement before he can establish a benefit year are administratively undesirable. For example, such a provision would be one requiring that the worker complete a week of unemployment, that he be available for work, or that he be free from disqualification. Under any of these provisions, the agency must defer action on the monetary determination until the payment is nearly or already due or it must make many conditional monetary determinations that will never be used because, by the time claimants have met these various requirements, their base periods have changed.

Provisions for Starting a Second Benefit Year

With uniform periods, a potential new benefit year begins for all claimants receiving benefits at the turn of the benefit year. Eligible claimants can draw benefits in the second benefit year without interruption unless a waiting week is required (see page 56). With individual periods, a second benefit year does not begin until after the end of the claimant's last preceding benefit year--a year which ordinarily began with a period of unemployment. Claimants who exhaust their benefits must wait until the end of the benefit year before they can begin a new benefit year and draw benefits based on a new base period.

In States which cancel wage credits in certain disqualifying situations (see page 68), there may be instances in which a benefit year is established in which no benefits are payable because all wage credits have

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been cancelled. The Bureau recommends that in such instances the benefit year and base period be cancelled also. Then a new benefit year can be started as soon as the claimant has sufficient qualifying wages or employment. Such a provision serves a useful purpose in that it helps to mitigate the extremely punitive effect of setting up a period of 1 year in which all benefits are barred.

Request Wage Reporting

A small but increasing number of States have instituted a system of requesting wage reports from employers for claimants only after they file a claim. This system is termed "request wage reporting." This administrative change, eliminating the receipt of quarterly wage reports from employers, has had far-reaching effects on the benefit formula. It permits the reduction or elimination of the lag period between the base period and the benefit year, and eliminates the necessity of having a formula based on calendar quarters or a calendar year.

The States having this system of reporting use a base period ending either immediately before the benefit year, or within a short period prior to it. Some States end the base period with the end of the last calendar quarter preceding the benefit year (see Table 1, page A-2). Any one of these definitions of base period has the advantage of using more recent wage and employment data than would be available under a system of quarterly wage reports.

The impact of request wage reporting is also felt in other aspects of the benefit provisions, that is, the qualifying requirement and computation of benefits. In some benefit formulas these provisions are in terms of the claimant's weeks of employment in the base period (see page 44). Benefit formulas requiring data on weeks of employment are not confined to the States that use a request reporting system. However, it is easier to obtain data on weeks of employment under such a reporting system. A number of the "request reporting" States, but not all, have benefit formulas that use weeks-of-employment data.

Certain concepts have been commonly associated with request reporting systems but are not inherent in them. One of these is the "per employer determination" system used in several of the States that first adopted request reporting. Another is the punitive character of the disqualification provisions that generally accompanied adoption of the system. Still another is the postponement of the start of the benefit year until the claimant is free of disqualification. The Bureau considers these concepts undesirable and recommends that they be omitted. Although not inherent, the association of these concepts with request reporting is not merely coincidental. Under this system, it is easy to obtain and use separation information concerning employment that is remote from the current unemployment and its preceding separation from work. The receipt of a separate report from each employer at the time the claim is filed, showing both employment and separation information,

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tends to promote t' idea of relating the worker to [illegible] of his prior employers in turn as to his work record and the reas[illegible] for separation, rather than to his work record as a whole and to the reason for his current unemployment.

Experience with the system in several States has shown that it is feasible to obtain timely wage information under a request reporting system from the employers that are correctly listed by the claimant. Examination of employer records indicates that these reports are usually correct. While claimants can generally identify their base-period employers, it is more difficult for those who work for many employers in the course of a year--as, for instance, in the building trades. In these instances, failure to identify all base-period employers may frequently result in a loss of benefits, which would not occur under a system of quarterly wage reporting. With request reporting, such losses cannot be eliminated entirely, but the number may be reduced by competent claims interviewing.

In order to obtain accurate and timely reports and to reduce the delays in benefits caused by late reports, the law should provide: (1) That employers shall furnish each worker, upon separation, with a notice showing the employer's name, account number, and the address where employment and wage records are maintained, and advising the worker that he should keep such information because it will be needed when he files a claim for benefits; (2) That, if the employer fails to file timely reports, benefits shall be based upon the claimant's statement, supported by such information as may be reasonably required under the individual circumstances of the claimant, and that benefits paid on the basis of such statements, in the absence of fraud, shall not be subject to repayment on the basis of any redetermination based on later information; and (3) That employers who fail to file timely reports shall be subject to a money penalty for each report that is delinquent. In addition, the time limit for filing reports should be set so that there is sufficient time to receive the report and make the determination before benefits are due.

Summary

From time to time, changes are made in State provisions for base period and benefit year, for substantive or for administrative reasons. In making such changes, the Bureau recommends:

1. That the lag between the base period and benefit year be as short as possible, consistent with the benefit formula and with administrative feasibility.

2. That the definition of a valid claim to begin a benefit year not include requirements of unemployment, ability to work, availability for work, or freedom from disqualification.

[illegible]

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3. That an individual, rather than a uniform, benefit year be used.

4. That the benefit year and base period be limited to a year.

5. That under a formula using quarters for the base period the benefit year be a year period, rather than 52 weeks.

6. That, when a benefit year is established in which no benefits are payable because all wage credits have been cancelled (see page 68), the benefit year and base period be cancelled also.

7. That, in States using a system of request reporting, the law provide (a) that employers be required to furnish separated workers with written notices which show the employer's firm name, registration number, and reporting address; (b) that the time limit for employer reports be set so as to permit timely benefit payments; (c) that the agency be authorized to compute and pay benefits on the basis of information furnished by the claimant in cases where an employer's report is delayed beyond a specified time and that, in the absence of fraud, repayment of such benefits not be required; and (d) that a money penalty be required of employers who do not furnish wage and employment information promptly.

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